

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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BRODERICK SKOWRONSKI, a Minor, by his  
Next Friend EMILY SKOWRONSKI and  
THOMAS SKOWRONSKI,

UNPUBLISHED  
June 3, 2003

Plaintiffs-Appellants,

v

MUNSON MEDICAL CENTER, RENEE  
JACOBSON, R.N., GRAND TRAVERSE  
OBSTETRICS & GYNECOLOGY, P.C., and  
DR. LAURA DANZ,

No. 237834  
Grand Traverse Circuit Court  
LC No. 00-021015-NH

Defendants-Appellees.

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Before: Griffin, P.J., and Neff and Gage, JJ.

PER CURIAM.

Plaintiffs appeal by leave granted an order of the circuit court striking their expert witnesses in this medical malpractice action. We affirm.

This appeal concerns discovery sanctions. On January 17, 2001, the court entered a civil scheduling order providing that plaintiffs were to disclose their experts by April 30, 2001. Defendants were allowed to depose plaintiffs' experts and then disclose their experts no later than June 29, 2001. There were typical delays in scheduling depositions. Defendants served plaintiffs with interrogatories for their expert witnesses and subsequently filed a motion to compel answers. The motion was heard on October 15, 2001, and the court ordered that answers be provided by 5 p.m. on October 18, 2001.

Plaintiffs faxed unsigned and incomplete answers to defense counsel on October 19, 2001. They did not provide requested curriculum vitae or written expert reports. The deposition of Dr. James O'Leary was scheduled for October 20 in Asheville, North Carolina. Other depositions were scheduled for October 22 in Naples, Florida, October 29 in Los Angeles, November 1 in Hicksville, New York, and November 7 in Overland Park, Kansas. Trial was scheduled to begin December 11, 2001.

In an October 17 letter, plaintiffs' counsel cancelled the October 22 deposition of Dr. Gatewood, stating that he would be in trial. When plaintiffs did not timely provide interrogatory

answers, defense counsel cancelled the October 20 deposition of Dr. O'Leary and moved to strike plaintiffs' experts. The remaining scheduled expert depositions were cancelled.

The court heard argument on the motion on October 29, 2001. Giving plaintiffs the benefit of the doubt regarding the due date for the interrogatory answers, the court still found the substance of the answers was inadequate. The sequence of discovery was clearly set out in the scheduling order. The answers given, even if timely and in correct form, would not have made the depositions meaningful. Plaintiffs displayed a lack of candor in why Dr. Gatewood's deposition was withdrawn, and by withdrawing him at such a late date, it was understood that he would not be a witness. The interrogatory answers were evasive, and they were inconsistent with the court rules and the court's order. The court declined to dismiss the case, but it ruled that the individuals whose interrogatories were to be answered prior to 5 p.m. on October 18, 2001, would not be allowed to testify.

On appeal, plaintiffs argue that the trial court abused its discretion in striking the expert witnesses where the result will be a directed verdict for defendants. Plaintiffs' actions were not willful and were caused by counsel's involvement in another trial. Defendants would have achieved full discovery if they had proceeded with the scheduled depositions.

Defendants respond that the court acted within its discretion in striking plaintiffs' experts where plaintiffs failed to provide meaningful discovery and failed to exercise diligence in pursuing the case. The trial court has broad authority to sanction discovery violations. The repeated serious violations merited the remedy imposed.

This Court reviews a trial court's imposition of discovery sanctions for an abuse of discretion. *Bass v Combs*, 238 Mich App 16, 26; 604 NW2d 727 (1999). MCR 2.313(B)(2)(b) provides that if a party fails to obey an order to provide or permit discovery, the trial court may order such sanctions as are just, including an order refusing to allow the disobedient party to introduce designated matters into evidence.

Severe sanctions are generally appropriate only when a party flagrantly and wantonly refuses to facilitate discovery, not when the failure to provide discovery is accidental or involuntary. *Traxler v Ford Motor Co*, 227 Mich App 276; 576 NW2d 398 (1998). The record should reflect that the trial court gave careful consideration to the factors involved and considered all its options in determining a just and proper sanction. *Dean v Tucker*, 182 Mich App 27, 32; 451 NW2d 571 (1990). Factors to be considered include (1) whether the violation was willful or accidental, (2) the party's history of refusing to comply with discovery requests, (3) prejudice to the other party, (4) actual notice of the witness to the other party and the length of time prior to trial that notice was received, (5) whether the party has a history of engaging in deliberate delay, (6) the degree of compliance with other provisions of the order, (7) attempt to timely cure the defect, and (8) whether a lesser sanction would better serve the interests of justice. *Id.* at 32-33.

In the present case, the trial court gave full consideration to the relevant factors. It found that the violations were not merely accidental, and they occurred over a long period. Defendants were prejudiced because they would have traveled great distances to attend depositions without the information needed to participate. Without the interrogatory answers, they appropriately

cancelled the depositions, and there was little time to reschedule before the case evaluation and trial. Plaintiffs did not cure the defects in a timely fashion and lesser sanctions would not solve the problems when trial was imminent. Under these circumstances, there is no showing that the trial court abused its discretion in imposing its sanction for the discovery violations.

Affirmed. The stay of proceedings previously granted by this Court is vacated. We do not retain jurisdiction.

/s/ Richard Allen Griffin

/s/ Janet T. Neff

/s/ Hilda R. Gage